

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Steven R. Cocchi, Esquire
(SC-9313)
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*Attorneys for Plaintiffs ELIZABETH A. TARTAGLIO, individually and as Administratrix ad
prosequendum for the Estate of her late husband, Robert A. Tartaglio, Jr., NICOLE ALISSA
TARTAGLIO and MARISSA ANN TARTAGLIO, daughters of the late Robert A. Tartaglio, Jr.,
ROBERT A. TARTAGLIO, HASSAN ALI, FRANK P. FABI, JR. and his wife, LORIE A. FABI,
DAVID RICHARD HAND, DENNIS VESPER, DENNIS P. BUTLER, DOMENIC C.
DEAMICIS, JR., OSCAR DERAMUS, JR., and his wife, LINDA J. DERAMUS, MARJORIE H.
GRIFFITHS, mother of the late James P. Bigelow, GREGORY J. HAZEN, and his wife,
BETTY J. GRAMS, ROBERT I. RODRIGUEZ and his wife, DANIELLE C. RODRIGUEZ.*

**ELIZABETH A. TARTAGLIO,
individually and as Administratrix ad
prosequendum for the Estate of her
late husband, Robert A. Tartaglio, Jr.,
NICOLE ALISSA TARTAGLIO and
MARISSA ANN TARTAGLIO,
daughters of the late Robert A.
Tartaglio, Jr., ROBERT A.
TARTAGLIO, HASSAN ALI, FRANK
P. FABI, JR. and his wife, LORIE A.
FABI, DAVID RICHARD HAND,
DENNIS VESPER, DENNIS P.
BUTLER, DOMENIC C. DEAMICIS,
JR., OSCAR DERAMUS, JR., and his
wife, LINDA J. DERAMUS,
MARJORIE H. GRIFFITHS, mother
of the late James P. Bigelow,
GREGORY J. HAZEN, and his wife,
BETTY J. GRAMS, ROBERT I.
RODRIGUEZ and his wife,
DANIELLE C. RODRIGUEZ,**

Plaintiffs,

VS.

**UNITED STATES DEPARTMENT
OF LABOR,**

Defendant.

CAMDEN VICINAGE

CASE NUMBER:

04/cv3578(JHR)

Civil Action

COMPLAINT

D'AMATO & D'AMATO
COUNSELLORS AT LAW
A PROFESSIONAL CORPORATION

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LINWOOD, NEW JERSEY 08221

INTRODUCTION

1. Plaintiffs ELIZABETH A. TARTAGLIO, individually and as Administratrix ad prosequendum for the Estate of her late husband, Robert A. Tartaglio, Jr., NICOLE ALISSA TARTAGLIO and MARISSA ANN TARTAGLIO, daughters of the late Robert A. Tartaglio, Jr., ROBERT A. TARTAGLIO, HASSAN ALI, FRANK P. FABI, JR. and his wife, LORIE A. FABI, DAVID RICHARD HAND, DENNIS VESPER, DENNIS P. BUTLER, DOMENIC C. DEAMICIS, JR., OSCAR DERAMUS, JR., and his wife, LINDA J. DERAMUS, MARJORIE H. GRIFFITHS, mother of the late James P. Bigelow, GREGORY J. HAZEN, and his wife, BETTY J. GRAMS, ROBERT I. RODRIGUEZ and his wife, DANIELLE C. RODRIGUEZ, bring this action against the UNITED STATES DEPARTMENT OF LABOR, seeking judicial review of its denial of Plaintiffs' Freedom of Information Act request for disclosure of the Occupational Safety and Health Administration's investigation files concerning the Tropicana Casino Parking Garage Construction Collapse in Atlantic City, New Jersey.

JURISDICTION AND VENUE

2. Plaintiffs are residents of the state of New Jersey and their claim arises under the Freedom of Information Act, 5 U.S.C.A. § 552. Exclusive jurisdiction and venue lie in the United States Federal District Court for the District of New Jersey pursuant to 28 U.S.C.A. § 1331, 28 U.S.C.A. § 1391 and 5 U.S.C.A. § 552(a)(4)(B), which provides for judicial review in the United States District Court, in the district in which the complainant resides, when United States Government Agency records are withheld from a Freedom of Information Act requestor.

D'AMATO & D'AMATO
COUNSELORS AT LAW
ATTORNEYS AT LAW

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PARTIES

3. Plaintiffs ELIZABETH A. TARTAGLIO, individually and as Administratrix ad prosequendum for the Estate of her late husband, Robert A. Tartaglio, Jr., NICOLE ALISSA TARTAGLIO and MARISSA ANN TARTAGLIO, daughters of the late Robert A. Tartaglio, Jr., ROBERT A. TARTAGLIO, HASSAN ALI, FRANK P. FABI, JR. and his wife, LORIE A. FABI, DAVID RICHARD HAND, DENNIS VESPER, DENNIS P. BUTLER, DOMENIC C. DEAMICIS, JR., OSCAR DERAMUS, JR., and his wife, LINDA J. DERAMUS, MARJORIE H. GRIFFITHS, mother of the late James P. Bigelow, GREGORY J. HAZEN, and his wife, BETTY J. GRAMS, ROBERT I. RODRIGUEZ and his wife, DANIELLE C. RODRIGUEZ, are citizens of the United States of America and residents of the State of New Jersey.

4. Defendant, UNITED STATES DEPARTMENT OF LABOR, whose address is 200 Constitution Avenue, NW, Washington, D.C., is a Government Agency and Department of the Executive Branch of the United States Government.

FIRST COUNT

5. On October 30, 2003, six levels of the Tropicana Casino Parking Garage, located at Brighton Avenue, between Atlantic and Pacific Avenues, Atlantic City, New Jersey, collapsed without warning, causing serious injury and/or death to Plaintiffs.

6. The Marlton, New Jersey branch of the Occupational Safety and Health Administration, United States Department of Labor, (hereinafter "OSHA") conducted an investigation of the Tropicana Casino Parking Garage Collapse (hereinafter "Collapse"), commencing on October 30, 2003 and concluding on April 29, 2004.

7. On April 29, 2004, OSHA issued Citations and Notifications of Penalties, with

finest totaling \$119,000.00, to four contractors involved in the planning and construction of the Tropicana Casino Parking Garage: Fabi Construction Inc., Keating Building Corporation, Mitchell Bar Placement and Site Blauvelt Engineers. (Copies of the Citations and Notifications of Penalty for Inspection Numbers 306731753, 306731779, 306731787 and 306733965 are attached hereto as Exhibit A)

8. On May 4, 2004, the law firm of D'Amato & D'Amato, P.C., acting on behalf of the Plaintiffs, requested that OSHA Area Director Gary Roskoski produce a complete copy of the OSHA files relative to its investigation into the Collapse. (See Exhibit B)

9. On June 2, 2004, the law firm of D'Amato & D'Amato, P.C., acting on behalf of the Plaintiffs, re-requested that OSHA Area Director Gary Roskoski produce a complete copy of the OSHA files relative to its investigation of the Collapse. (See Exhibit C)

10. On June 2, 2004, OSHA Area Director Gary Roskoski denied Plaintiffs' aforementioned requests. (See Exhibit D)

11. On June 3, 2004, the law firm of D'Amato & D'Amato, P.C., acting on behalf of the Plaintiffs, and pursuant to 29 C.F.R. § 70.22, filed a Freedom of Information Act appeal of the aforementioned denial with the Solicitor of the Department of Labor. (See Exhibit E)

12. On July 2, 2004, the law firm of D'Amato & D'Amato, P.C. received notification from the Office of the Solicitor, Department of Labor, affirming Area Director Roskoski's decision to withhold the requested OSHA investigation files. (See Exhibit F)

13. Upon information and belief, several other attorneys representing victims and the families of victims who were injured in the Collapse also requested a complete copy of the OSHA investigation files. Their requests were also denied. (See Exhibit G)

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SECOND COUNT

14. Plaintiffs repeat the allegations contained in paragraphs 1 through 13 as if same were set forth at length herein.

15. On May 21, 2004, in anticipation of the litigation that would arise out of the Collapse, Judge William C. Todd, III, Atlantic County Presiding Judge, Superior Court of New Jersey, (hereinafter "Judge Todd"), issued a Case Management Order providing for centralized management of all lawsuits arising out of the Collapse in the New Jersey Superior Court, Law Division, Atlantic County. (A copy of Judge Todd's Order is attached hereto as Exhibit H)

16. On June 3, 2004, Judge Todd issued Case Management Order No. 2, permitting Plaintiffs who suffered personal injuries in the Collapse to file "Short Form Complaints" which adopt by reference the allegations contained in a "Form Master Complaint" previously filed with the Clerk of the Court. (A copy of Case Management Order No. 2 is attached hereto as Exhibit I; a copy of the Form Master Complaint is attached hereto as Exhibit J, and a copy of the form Short Form Complaint is attached hereto as Exhibit K)

17. The Plaintiffs filed Short Form Complaints in the Atlantic County Court Clerk's Office on June 15, 2004. (See Exhibit L)

18. Upon information and belief, numerous other Plaintiffs have filed Short Form Complaints in the Superior Court of New Jersey, Atlantic County, alleging various causes of action for personal injuries suffered in the Collapse. (See Exhibit M)

THIRD COUNT

19. Plaintiffs repeat the allegations contained in paragraphs 1 through 18 as if same were set forth at length herein.

20. Plaintiffs' potential negligence claims against licensed architects and engineers involved in the planning and construction of the Tropicana Casino Parking Garage are subject to the requirements of the New Jersey Affidavit of Merit statute, N.J.S.A. 2A:53A-27.

21. Plaintiffs are unable to obtain affidavits of merit without supplying their attesting architectural and engineering experts with the OSHA investigation files.

22. Pursuant to the Freedom of Information Act, specifically 5 U.S.C.A. § 552(a)(3)(A), Plaintiffs are entitled to disclosure of the complete OSHA investigation files relative to inspection numbers 306731753, 306731779, 306731787 and 306733965.

23. Pursuant to Department of Labor Regulations, specifically 29 C.F.R. § 70.19, Plaintiffs are entitled to disclosure of the complete OSHA investigation files relative to inspection numbers 306731753, 306731779, 306731787 and 306733965.

24. The Department of Labor is improperly withholding the contents of the aforementioned files from the Plaintiffs.

25. Examination of the contents of the OSHA investigation files relative to inspection numbers 306731753, 306731779, 306731787 and 306733965 is necessary for Plaintiffs' counsel to adequately represent Plaintiffs' interests in their personal injury lawsuits.

26. The Department of Labor's improper withholding of the contents of the aforementioned files has unduly prejudiced the Plaintiffs in their ability to properly investigate the cause of the Tropicana Parking Garage Collapse, to identify all responsible parties, to obtain affidavits of merit, and to obtain fair and just compensation for their injuries.

27. Pursuant to 5 U.S.C.A. § 552(a)(4)(B), this Court has the ability to enjoin the Department of Labor from withholding agency records and to order the production of any records improperly withheld.

WHEREFORE, Plaintiffs demand judgment in their favor, and against the Defendant, United States Department of Labor,

1. Enjoining it from withholding the OSHA investigation files, including but not limited to, correspondence, investigative statements, memos, notes, pleadings, legal papers, photographs, video recordings, maps, diagrams and blueprints, with regard to the investigations which were conducted October 30, 2003 through April 29, 2004 into the Collapse of the Tropicana Casino Parking Garage and relating to inspection numbers 306731753, 306731779, 306731787 and 306733965, and
2. Compelling the immediate production of those records, and
3. Payment of costs, attorney's fees, and any other relief the court deems appropriate.

D'AMATO & D'AMATO, P.C.

BY: 
STEVEN R. COCCHI, ESQUIRE
Attorney for Plaintiffs

D'AMATO & D'AMATO
COURT REPORTERS & LAW
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DATED: July 23, 2004

CERTIFICATION

Steven R. Cocchi, Esquire, of full age, certifies:

1. I am a member of the firm of D'AMATO & D'AMATO, P.C., and am entrusted with the preparation and trial of this case.

2. This case is not subject to any other court action or arbitration proceeding other than those previously filed in the Superior Court of New Jersey, Law Division, Atlantic County, and consolidated under the caption "In Re Tropicana Parking Garage Collapse Litigation."

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

D'AMATO & D'AMATO, P.C.

BY: 

STEVEN R. COCCHI, ESQUIRE
Attorney for Plaintiffs

DATED: July 23, 2004